

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EPICE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case 4:07CV00206 HEA
THE LAND REUTILIZATION	)	
AUTHORITY OF THE	)	
CITY OF ST. LOUIS, et. al.,	)	
	)	
Defendants.	)	

**DEFENDANT, THE CITY OF ST. LOUIS, MISSOURI, MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR LEAVE OF COURT TO FILE MOTION FOR  
SUMMARY JUDGMENT REGARDING COUNT III OF PLAINTIFF'S  
FOURTH AMENDED COMPLAINT**

Comes now Defendant, the City of St. Louis, Missouri (hereinafter, "Defendant" or "City"), and for its Memorandum in Support of its Motion for Leave of Court to File Motion for Summary Judgment Regarding Count III of Plaintiff's Fourth Amended Complaint. In support of its *Memorandum*, Defendant states the following:

In the Court's Opinion, Memorandum, and Order of December 4, 2009 (Doc. 145) (hereinafter, "Court's Order"), the Court ordered that Defendants' "Motion for Partial Summary Judgment [] is granted as to Counts I, II and IV and denied on Count III.". (*Court's Order*, pg. 24). Count III of Plaintiff's Fourth Amended Complaint is an action under Section 67.450, RSMo against only Defendant, City of St. Louis, for a wrongful demolition of a fence located at the subject property. (Doc. 94, pgs. 22-24). As a result of the Court's Order, all defendants have been dismissed in this action except for the City. Only Count III, the Section 67.450, RSMo wrongful demolition claim, remains in the case.

In the Court's Order, the Court stated that regarding Count III of Plaintiff's Fourth Amended Complaint, "there are still material issues of fact regarding whether the fence was a structure contemplated under § 67.450 RSMo and whether notice of the demolition of the fence was constitutionally sufficient". (*Court's Order*, pg. 24).

The Court previously set this case for trial on February 16, 2010. Based on the Court's Order, only the wrongful demolition, Section 67.450, RSMo action, will be tried. It is the position of the Defendant that this claim can be resolved through a brief summary judgment motion. There are no outstanding issues of material fact and the law is clear. As a result, Defendant believes the remaining claim in this case can be resolved through summary judgment motions.

WHEREFORE, Defendant, the City of St. Louis, Missouri, prays that this Court grant its Motion for Leave of Court to File Motion for Summary Judgment Regarding Count III of Plaintiff's Fourth Amended Complaint, and for all other relief this Court deems just and proper.

Respectfully submitted,

PATRICIA A. HAGEMAN,  
City Counselor for the City of St. Louis

/s/ Robert M. Hibbs  
Robert M. Hibbs #537348  
Assistant City Counselor  
Donald G. Dylewski #34218  
Associate City Counselor  
Attorneys for Defendant  
City of St. Louis, Missouri  
1200 Market, Room 314  
St. Louis, MO 63103  
622-3361 (Telephone)

622-4956 (Fax)

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically on the 2<sup>nd</sup> day of February, 2010, with the Clerk of Court to be served by operation of the Court's electronic filing system upon all parties of record.

/s/ Robert M. Hibbs  
Robert M. Hibbs #537348